

CHAPTER 7. VARIANCES

7-1 PURPOSE

The purpose of this Chapter is to describe the procedures, requirements, and criteria for processing and reviewing variance applications.

7-2 LIMITATIONS ON VARIANCE REQUESTS

Variance requests shall be limited to the design and development standards in Chapter 5. Design exceptions provided for in AASHTO publications listed as items 4, 5 and 7 of Table A-1 in Chapter 5 shall not be considered variances and shall be processed in accordance with the County's adopted policy regarding design exception practices.

7-3 VARIANCE APPLICATION AND REVIEW REQUIREMENTS

7-3-1. Initiation

An application shall only be submitted by the property owner, or any person having a contractual interest in the property, or by an authorized agent. The variance application may be submitted prior to or concurrent with the submittal of a subdivision application, and may be submitted prior to the final plat approval if the subdivision has been approved or conditionally approved.

7-3-2. Initial Variance Application and Review Requirements

- a. Submittal of Application. The applicant shall submit a complete application, including the contents listed in Section 3-1-5(a)(xxxiv) to the Planning Department, along with the appropriate fee, in accordance with the adopted fee schedule.
- b. Element Review. For variance applications received without a subdivision application, receipt of the variance application will meet the Element Review requirements in Section 3-1-6(a).
- c. Sufficiency Review. Sufficiency Review of a Variance Application (the subsections of Section 3-1-5(a)(xxxiv)) shall be conducted in accordance with Section 3-1-6(b).
- d. Applicable Regulations. Refer to Section 3-1-6(c) for the applicable regulations for variance applications.

7-3-3. Time Period for Approval, Conditional Approval, or Denial

- a. Major and Subsequent Minor Subdivisions. Refer to Section 3-2-3.
- b. First Minor Subdivisions. Refer to Section 3-3-3.

7-3-4. Variance Review Procedures

- a. Major and Subsequent Minor Subdivisions. Refer to Sections 3-2-4. Public Hearing - Notification Requirements, 3-2-5. Subdivider's Preference for Mitigation, 3-2-6. Public Hearing

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Procedural Requirements, and 3-2-7. Subsequent Public Hearing. Refer to Section 7-3-5 for BCC Decision and Documentation.

- b. First Minor Subdivisions. Refer to Sections 3-3-4. Public Meeting Notice, 3-3-5. Subdivider's Preference for Mitigation, and 3-3-6. Public Meeting - Procedure. Refer to Section 7-3-5 for BCC Decision and Documentation.

7-3-5. BCC Decision and Documentation

- a. Variance Review Criteria.

The BCC, in reviewing a variance from these regulations, shall first determine that strict compliance with these regulations will result in undue hardship and when compliance is not essential to the public welfare. Following this determination, the BCC shall not approve the variance application unless it makes an overall positive finding, based on substantial competent evidence, on the following criteria:

- i. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.
- ii. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.
- iii. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).
- iv. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.
- v. The variance will not cause a substantial increase in public costs.

- b. Evidence.

In making its decision to approve, conditionally approve, or deny a proposed variance, the BCC may consider and weigh the following, as applicable:

- i. The variance application;
- ii. Subdivider's expressed preference for mitigation;
- iii. An officially adopted growth policy, which shall be considered as one factor and shall not be the sole basis for any decision;
- iv. Comments, credible evidence and discussions at the public hearing(s)/meeting(s);
- v. Planning Department's staff report and recommendation;
- vi. Planning Board's comments; and
- vii. Any additional information authorized by law.

7-3-6. Imposition of Conditions

In issuing a variance, the Board of County Commissioners may impose such conditions and restrictions upon the premises benefited as may be necessary to allow a positive finding to be made on any of the foregoing factors, or to minimize the injurious effect of the variance.

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7-3-7. Documentation of BCC Decision

- a. In rendering its decision to approve, conditionally approve, or deny the variance application, the BCC shall issue written findings of fact that evaluate the variance application with the variance review criteria in Section 7-3-5(a).
- b. When the BCC approves, denies, or conditionally approves the variance application, it shall send the subdivider a signed variance application decision, with the appropriate signature. The variance application decision shall:
 - i. Contain information regarding the appeal process for the denial or imposition of conditions;
 - ii. Identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - iii. Provide the facts and conclusions that the BCC relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision;
 - iv. Provide the conditions that apply to the variance application approval and that must be satisfied before the final plat may be approved; and
 - v. Set forth the time limit for approval, pursuant to Section 7-4 below.

7-4 DURATION OF VARIANCE APPROVAL

An approved variance shall run with the land and shall expire 30 months after the date of approval or earlier by Board action unless the final plat is filed for the entire subdivision, or in the case of phased subdivisions, for the first phase.